

1 Q The financial commitment from Mr. Conant?

2 A I have had ongoing conversations with Mr. Conant for a
3 number of years. I don't know if I can give you an exact
4 date.

5 Q Did he tell you that he would give you \$4,000,000?

6 A This has been an ongoing conversation. I said obviously
7 when the litigation ended with the Supreme Court, but pick
8 your date in the last few months.

9 Q Any time within the last few months would be fairly
10 accurate?

11 A Well, since June of 1990. You know, we -- Rainbow
12 suspected that the Supreme Court would not review its own
13 decision. It officially was made -- the denial of review
14 was made official in September, so --

15 MR. HARDEMAN: Your Honor, I have a question of Mr.
16 Fromberg relating to an exhibit. I am not sure that he
17 introduced it into evidence.

18 The Asbury Park Press I, \$15,000,000 --

19 MR. FROMBERG: I think it is in evidence as Exhibit
20 18.

21 THE COURT: I think we had received 18.

22 Was there an objection to that?

23 MR. HARDEMAN: No, there was not. I just wanted to
24 be sure that it was in.

25 THE COURT: So the record is clear, we have

ATTACHMENT J

principal. Any such interest would seriously diminish, and probably eliminate, Rainbow's already razor-thin integration superiority.

19. As discussed above, in its civil litigation Rainbow has claimed that, if Press is allowed to place its antenna where the Commission has authorized it, Rainbow will be "unable to secure financing." See Attachment A hereto. During Mr. Rey's testimony, counsel for the tower owner cross-examined him concerning that assertion. Only then did he reveal the arrangement with Mr. Conant (see n.9, supra), which would apparently provide Mr. Conant with an ownership interest in return for a \$4,000,000 investment. ^{11/} Such an arrangement is not unreasonable: anyone investing \$4,000,000 into an enterprise would normally be expected to seek something more secure than a mere handshake in return.

20. Admittedly, the precise terms (if any) of Rainbow's financial arrangements remain unclear before the Commission. But that is because Rainbow has chosen not to disclose any of this information to the Commission. And it is the resulting lack of clarity in Rainbow's ownership structure that demands full inquiry by the Commission before any further

^{11/} Counsel for Press has been advised that the transcript of Mr. Rey's testimony in the civil suit will not be available for several weeks. Copies of the relevant portions of that transcript will be provided when it is available. Representations contained herein relative to the substance of Mr. Rey's testimony are based on information provided by two individuals who attended the trial and personally observed Mr. Rey's testimony. Of course, the transcript of that testimony, when available, will speak for itself.

ATTACHMENT K

reliance on debt". The intended meaning of this statement must be that Rainbow has some "alternative financing" based on a loan or a loan commitment. But there is absolutely no other indication anywhere in the application that any such "alternative financing" exists or has ever existed. Moreover, it appears from the relative levels of investment which Rainbow describes in its application that Rainbow is, in fact, looking for any limited partners to provide effectively all the financing necessary: according to the limited partnership agreement, Rainbow itself is putting up only \$60,000 in capital contributions; by contrast, Rainbow is looking to its potential limited partners to put up \$5,999,900, see Affidavit attached to Rainbow limited partnership agreement. ^{2/}

7. Thus, if Rainbow's application is not granted or, if granted, if Rainbow's plans for limited partnership investment fail, Rainbow appears to have no alternative source of funding. That being the case, Rainbow cannot legitimately claim itself to be financially qualified.

Rainbow's Failure to Report All Present and Future
Ownership Interests.

8. In describing the financing arrangements which

^{2/} Rainbow also does not even attempt to explain how it can claim to have alternative funding when, in sworn cross-examination testimony in the civil litigation, Joseph Rey (Rainbow's dominant principal) testified that he had no written loan agreements with anyone and that he had spoken about possible loans with only one person. See Attachment A hereto. Attachment A consists of pages 103-113 of the transcript of Mr. Rey's sworn testimony in the civil litigation. The Commission's attention is directed in particular to pages 103 (line 19) - 104 (line 19), pages 105 (line 21) - 106 (line 5).

Rainbow had supposedly made, orally, with Mr. Conant (i.e., the individual supposedly willing to provide Rainbow with \$4,000,000 on a handshake), Mr. Rey testified that Rainbow had agreed to provide Mr. Conant with "a minority participation in the station." See Attachment A hereto (Transcript at 110, lines 13-22). To the best of Press' knowledge, Rainbow has never advised the Commission of any such agreement, notwithstanding the clear and unequivocal requirements of Section 73.3613(b). Nor, for that matter, does Rainbow's transfer of control application refer to any such agreement.

9. The lack of any such reference gives rise to two possibilities. First, there is the possibility that the supposed agreement with Mr. Conant is still in full force and effect and that the pending transfer of control application is merely a device designed to permit implementation of the agreement (although Rainbow's failure to refer to the agreement in its application is inexplicable). Second, there is the possibility that the supposed agreement with Mr. Conant has terminated and that Rainbow now wishes to try to raise funds through the sale of equity, an approach which cannot be accomplished without some reorganization of the permittee entity. Either of these alternatives, however, creates problems for Rainbow.

10. If Rainbow really is trying to implement its above-described financing arrangement with Mr. Conant, then Rainbow is effectively acknowledging that, for at least a year (and conceivably for several years) it has failed to disclose the existence of an agreement, disclosure of which is required by the

CERTIFICATE OF SERVICE

I, Harry F. Cole, hereby certify that on this 25th day of April, 1996, I have caused copies of the foregoing "Opposition of Press Broadcasting Company, Inc. To Motion for Partial Summary Decision" to be hand delivered (as indicated below) or placed in the United States mail, first class postage prepaid, addressed to the following individuals:

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